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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

TXO PRODUCTION CORP.,
Petitioner,
v.
ALLIANCE RESOURCES CORP., TUG FORK LAND COMPANY, GEORGE KING, and GROVER C. GOODE,
Respondents.

On Writ of Certiorari to the Supreme Court of Appeals of West Virginia

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BRIEF OF THE AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION, AMERICAN INSURANCE ASSOCIATION, AMERICAN PETROLEUM INSTITUTE, BUSINESS ROUNDTABLE, CHAMBER OF COMMERCE OF THE UNITED STATES, CHEMICAL MANUFACTURERS ASSOCIATION, AND NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. THE DUE PROCESS CLAUSE REQUIRES SUBSTANTIVE GUIDELINES ON PUNITIVE DAMAGES	5
A. *Pacific Mutual Life Insurance Company v. Haslip* Has Produced Mixed Results In The Lower Courts	5
B. Current Punitive Damages Law Did Not Exist In 1791; It Dates Back Only to 1967	9
1. Punitive Damages Doctrine of 1791	10
2. The Broadened Standard By Which Punitive Damages Now Are Awarded	13
3. The Explosion in the Size of Punitive Damages Awards In Comparison To Compensatory Damages	15
II. THE APPROPRIATE STANDARD FOR AWARDING PUNITIVE DAMAGES IS INTENTIONAL INFLICTION OF HARM OR CONSCIOUS DISREGARD OF SAFETY	18
III. THE AWARD IN THIS CASE VIOLATED DUE PROCESS BECAUSE OF EXCESSIVENESS	20
IV. THE COURT SHOULD FORMULATE GENERAL STANDARDS TO HELP GUIDE COURTS ABOUT EXCESSIVENESS	22
CONCLUSION	25
APPENDIX	1a

TABLE OF AUTHORITIES

CASES — Page

Addington v. Texas, 441 U.S. 418 (1979) 5

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Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988) 5, 6

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Page

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	Page
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	Page
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	Page
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STATUTES	
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Colo. Rev. Stat. § 13-21-102 (West 1992)	22
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STATEMENT OF INTEREST

Amici, the American Automobile Manufacturers Association, American Insurance Association, American Petroleum Institute, Business Roundtable, Chamber of Commerce of the United States, Chemical Manufacturers Association, and National Association of Manufacturers,

with the consent of the parties, present this brief in support of the Petitioner.[1]

The American Automobile Manufacturers Association is a trade association of American-owned and controlled companies making and selling multiple lines, makes and models of passenger cars and light trucks. The Association's members, Chrysler Corporation, Ford Motor Company, and General Motors Corporation, manufacture about eighty percent of the motor vehicles produced in the United States.

The American Insurance Association ("AIA") is a national trade organization representing over 250 companies writing property and casualty insurance in every state and jurisdiction of the United States. These companies together write more than $60 billion in premiums annually, representing twenty-seven percent of all property and casualty insurance underwritten in the United States. Combined, AIA companies have assets of $162 billion, and are affiliated with 79,000 independent insurance agents nationwide.

The American Petroleum Institute represents the interests of approximately 300 member companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining, and marketing of petroleum products.

The Business Roundtable is an association of the chief executive officers of approximately 200 of the nation's largest companies. The Roundtable examines public issues that affect the economy and develops positions which seek to reflect sound economic and social policies.

The Chamber of Commerce of the United States is America's largest federation of businesses and business organizations, representing more than 215,000 companies, several thousand trade and professional associations, and hundreds of state and local Chambers of Commerce.

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[1] Letters of consent have been filed with the Clerk of the Court.

The Chemical Manufacturers Association is a non-profit trade association whose member companies produce, market, and use industrial chemicals. Its member companies comprise more than ninety percent of the productive capacity for basic industrial chemicals in the United States.

The National Association of Manufacturers ("NAM") is a non-profit voluntary business association representing more than 12,000 companies and subsidiaries that together employ eighty-five percent of all manufacturing workers in the United States and produce more than eighty percent of the nation's manufactured goods. More than 128,000 additional businesses are affiliated with NAM through the NAM Associations Council and the National Industrial Council.

This case is of interest to the *amici* because its disturbingly typifies the disproportionate punitive damages awards that occur under the current unguided and unrestrained patchwork system of awarding punitive damages—a system "run wild" which permits punitive damages awards of the type that "jar one's constitutional sensibilities." *Pacific Mutual Life Insurance Co. v. Haslip*, 111 S. Ct. 1032, 1043 (1991). *Amici* are the principal voices of the business and manufacturing communities and their members are the primary victims of excessive punitive damages awards. Ultimately, the impact of these runaway awards is felt by the consumer who purchases goods and services. The *amici* have a unique understanding of the impact of excessive punitive damages awards and the need for clarification of *Haslip's* holding that the Due Process Clause limits jury and judicial discretion in the awarding of punitive damages.

STATEMENT OF THE CASE

This case arises from a declaratory judgment action brought by Petitioner TXO Production Corporation in the

Circuit Court of McDowell County, West Virginia to clear a purported cloud on title on a mineral severance deed. Respondents counterclaimed alleging that TXO's actions constituted the "business tort" of slander of title. The jury found for Respondents and awarded $19,000 as compensation for attorneys' fees incurred in defending against TXO's claim. The jury also awarded Respondents $10 million in punitive damages.

The Supreme Court of Appeals of West Virginia rejected Petitioner's argument that the punitive damages award procedurally and substantively violated the Due Process Clause of the Fourteenth Amendment as enunciated in *Haslip* and *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W. Va. 1991), and affirmed. *TXO Production Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870 (W. Va. 1992). This Court granted certiorari on November 30, 1992.

SUMMARY OF ARGUMENT

As the Court enunciated in *Haslip*, the Due Process Clause places substantive limits on punitive damages awards. The excessive punitive damages award in the instant case "surely crosse[d] that line." *Alexander & Alexander, Inc. v. B. Dixon Evander & Associates, Inc.*, 596 A.2d 687, 711 (Md. App. 1991), *cert. denied*, 605 A.2d 137 (Md. 1992). To provide guidance to state legislatures and lower courts about excessiveness and to assure that awards (such as the one in the instant case) which "jar one's constitutional sensibilities" do not continue to "run wild" (*Haslip*, 111 S. Ct. at 1043), the Court should enunciate general guidelines which can be applied in future cases.

ARGUMENT

I. THE DUE PROCESS CLAUSE REQUIRES SUBSTANTIVE GUIDELINES ON PUNITIVE DAMAGES.

A. *Pacific Mutual Life Insurance Company v. Haslip* Has Produced Mixed Results in the Lower Courts.

In *Pacific Mutual Life Insurance Company v. Haslip*, 111 S. Ct. 1032, 1043 (1991), the Court made clear that the Due Process Clause of the Fourteenth Amendment places restraints on the award of punitive damages. Punitive damages are not normal civil or tort law damages. Their purpose is not to compensate for injury, but "to further the aims of the criminal law: 'to punish reprehensible conduct and to deter its future occurrence.'" *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 297 (1989) (opinion of O'Connor, J., concurring in part and dissenting in part) (quoting *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 87 (1988)).[2] They are a "windfall recovery" for plaintiffs. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 270-271 (1981) (opinion of Brennan, J., dissenting).[3]

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[2] *See also* W. Prosser, J. Wade & V. Schwartz, *Cases and Materials on Torts* 582-29 (8th ed. 1988) (punitive damages "are awarded . . . for the purpose of punishing the defendant, of admonishing him not to do it again, and of deterring others from following his example"); *Day v. Woodworth*, 54 U.S. 363, 371 (1852) ("By the common as well as statute law, men are often punished for aggravated misconduct or lawless acts, by means of a civil action, and the damages, inflicted by way of penalty or punishment, given to the party injured").

[3] Punitive damages, like many forms of punishment, are by their nature designed to "engender adverse social consequeences" (*Addington v. Texas*, 441 U.S. 418, 425-26 (1979)), including, in many instances, debilitating stigma. Courts and commentators alike have emphasized the "potentially devastating" ramifications of a punitive damages award on the character, reputation, business and good will of the civil defendant. *Browning-Ferris*, 492 U.S. at 281 (Brennan and Marshall, J.J., concurring). *See also International Bd. of Elec. Workers v. Foust*, 442 U.S. 42, 50 (1979) ("the impact of [a puni-

In *Haslip*, a diversity case involving alleged insurance fraud, the Court upheld Mrs. Haslip's punitive damages award, noting that Pacific Mutual knew its agent had engaged in an *identical* "pattern of fraud" at previous times. 111 S. Ct. at 1041. The Court added: "The trial court specifically found the conduct in question 'evidenced intentional, malicious, gross, or oppressive fraud.'" 111 S. Ct. at 1046. Nevertheless, the Court emphasized "once again" its concern about punitive damages that "run wild," and indicated that due process places limits on punitive damages awards. 111 S. Ct. at 1043.[4] The Court declined to express those limitations with precision, but suggested that the punitive damages award in *Haslip*, four times greater than Mrs. Haslip's compensatory damages, was "close to the line" of constitutional impropriety. 111 S. Ct. at 1046.[5]

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tive damages award] is unpredictable and potentially substantial"); Comment, *Criminal Safeguards and the Punitive Damages Defendant*, 34 U. Chi. L. Rev. 408, 417 (1967) (punitive awards have "'momentous and serious' . . . consequences" for civil defendants) (citation omitted).

[4] *See also Browning-Ferris*, 492 U.S. at 280-81, 282 (Brennan, and Marshall, J.J., concurring) (O'Connor and Stevens, J.J., concurring in part and dissenting in part); *Bankers Life & Cas. Co.*, 486 U.S. at 87 (O'Connor and Scalia, J.J., concurring in part and concurring in the judgment); *City of Newport*, 453 U.S. at 270-71 (Brennan, Marshall, and Stevens, J.J., dissenting).

[5] In the short period since the March 4, 1991 *Haslip* decision, the Court has demonstrated its concern about excessive punitive damages awards many times, vacating and remanding 12 punitive damages cases "in light of *Haslip*." *See Fleming Landfill, Inc. v. Garnes*, 111 S. Ct. 2882 (1991); *Transamerica Occidental Life Ins. Co. v. Koire*, 111 S. Ct. 2253 (1991); *Southern Life & Health Ins. Co. v. Turner*, 111 S. Ct. 1678 (1991); *Intercontinental Life Ins. Co. v. Lindblom*, 111 S. Ct. 1575 (1991); *Clayton Brokerage Co. of St. Louis, Inc. v. Jordan*, 111 S. Ct. 1298 (1991); *Reserve Life Ins. Co. v. Eichenseer*, 111 S. Ct. 1298 (1991); *Hospital Auth. of Gwinnett County v. Jones*, 111 S. Ct. 1298 (1991); *Church of Scientology of Calif. v. Wollersheim*, 111 S. Ct. 1298 (1991); *International Soc. for Krishna Consciousness of Calif. v. George*, 111 S. Ct. 1299 (1991); *Pacific Lighting Co. v. MGW, Inc.*, 111 S. Ct. 1299 (1991); *Portec, Inc. v. The Post Office*, 111 S. Ct. 1299 (1991).

The Court's opinion in *Haslip* has produced mixed results in the lower courts. Some courts have acted to follow the letter of *Haslip*. *See, e.g., Mattison v. Dallas Carrier Corp.*, 947 F.2d 95 (4th Cir. 1991) (South Carolina's punitive damages law held to violate due process); *Johnson v. Hugo's Skateaway*, 974 F.2d 1408 (4th Cir. 1992) (en banc) (Virginia's scheme for awarding punitive damages, as applied by the district court sitting in diversity, violated due process); *Alexander & Alexander, Inc. v. B. Dixon Evander & Associates, Inc.*, 596 A.2d 687, 710 (Md. App. 1991), *cert. denied*, 605 A.2d 137 (Md. 1992) ($12.5 million punitive damage award violated due process because it was "all out of proportion to both the harm caused and the perniciousness of the conduct").[6] Other courts, following the spirit of *Haslip*, have provided greater fairness in their respective state punitive damages law.[7] On the other hand, a number of lower courts have paid only "lip service" to the Court's admonition that due process places constitutional limits on punitive damages awards. *See* Gallop, Lempert & Stevens, *Post-'Haslip' Decisions on Punitive Damages: Most State Schemes Upheld*, Prod. Safety & Liab. Rptr. (BNA), March 3, 1992, at 268.

Indeed, there is so much confusion "in the fixing of punitive damages awards" (*Haslip*, 111 S. Ct. at 1043)

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[6] *See also* 596 A.2d at 711 ("Not only is the $12.5 million allowed by the court extraordinary in terms of Maryland history, it is far in excess of the actual harm caused to Evander, representing nearly fifty times the essentially liquidated compensatory damage. . . . If the $840,000 awarded in *Haslip* came 'close to the line' in terms of the actual loss suffered, this surely crosses that line").

[7] *See Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992) (heightened burden of proof, more restrictive standard, providing defendant with option to bifurcate trial); *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633 (Md.), *reconsideration denied*, 602 A.2d 1182 (Md. 1992) (heightened burden of proof).

that the West Virginia high court itself has set forth mixed messages on the issue. In *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W. Va. 1991), following this Court's remand, the court reversed and remanded for new trial a punitive damage award of $105,000 to plaintiffs who alleged defendant's solid waste disposal facility constituted a nuisance, but established no compensatory damages. The court held that in West Virginia a jury may not award punitive damages without finding compensatory damages, stating: "Punitive damages should bear a reasonable relationship to the potential of harm caused by the defendant's actions and that generally means that punitive damages must bear a reasonable relationship to actual damages because compensatory damages provide a reasonable measure of likely harm." 413 S.W.2d at 908.[8] Nevertheless, in this case, decided less than six months after *Garnes* and awarding attorneys' fees but no traditional compensatory damages, the court affirmed a $10 million punitive damages award.[9]

Predictability is needed in law, especially when it can result in harsh punishments. Some have suggested that

[8] In *Garnes*, Justice Neely, who also authored the opinion in the instant case, applauded the United States Supreme Court's opinion in *Haslip* as "a major step in the unification of America's decisional law in matters where the separate states are unable to craft a set of rational rules." 413 S.E.2d at 905.

[9] The West Virginia high court has vacillated over the past decade about whether punitive damages must bear a reasonable relationship to actual damages. Until 1982, it was settled West Virginia law that punitive "damages should bear some reasonable portion to the actual damage done else they would be unreasonable and excessive." *Pennington v. Gillaspie*, 66 S.E. 1009, 1015 (W. Va. 1910). *See also Toler v. Cassinelli*, 41 S.E.2d 672 (W. Va. 1946) (setting aside $1,000 punitive damages award with no actual damages); *Spencer v. Steinbrecher*, 164 S.E.2d 710 (W. Va. 1968) ($10,000 punitive award held not to bear reasonable proportion to $400 actual damages award). Since 1982, however, the court has delivered conflicting messages on this issue. *See Wells v. Smith*, 297 S.E.2d 872 (W. Va. 1982); *Garnes, supra*; *TXO Prod. Corp., supra*.

reform is unnecessary because, as a General Accounting Office study showed, a huge number of punitive damages awards are reversed.[10] This is precisely the reason that guidelines are needed. "Getting it right the second (or third or fourth) time around" is extremely costly and unnecessarily wasteful of both private and judicial resources. Without further guidance from the Court, punitive damages awards which "jar one's constitutional sensibilities" will remain commonplace. *See Haslip*, 111 S. Ct. at 1043. The situation cries out for involvement by the Court to provide a fair remedy.[11] Accordingly, the Court should clarify *Haslip*'s holding by issuing substantive guidelines on the restrictions imposed on punitive damages by the Due Process Clause.

B. Current Punitive Damages Law Did Not Exist In 1791; It Dates Back Only to 1967.

The principal objection to due process limitations on punitive damages is that the practice is said to have been

[10] *See* U.S. General Accounting Office; Report to the Chairman, Subcommittee on Commerce, Consumer Protection, and Competitiveness; Committee on Energy and Commerce, House of Representatives, *Product Liability: Verdicts and Case Resolution in Five States* 37 (Sept. 1989).

[11] In *Garnes*, Justice Neely prophetically wrote:

> State courts have adopted standards that are, for the most part, not predictable, not consistent and not uniform. Such fuzzy standards inevitably are most likely to be applied arbitrarily against out-of-state defendants. Moreover, this is a problem that state courts are by themselves incapable of correcting regardless of surpassing integrity and boundless goodwill. State courts cannot weigh the appropriate trade-offs in cases concerning the *national* economy and *national* welfare when these trade-offs involve benefits that accrue outside the jurisdiction of the forum and detriments that accrue inside the jurisdiction of the forum. (Emphasis in original).

Garnes, 413 S.E.2d at 905. *See also Blankenship v. General Motors Corp.*, 406 S.E.2d 781 (W. Va. 1991).

in place at the time the Bill of Rights was adopted. *See Pacific Mutual Life Insurance Co. v. Haslip*, S. Ct. U.S. Oral Arguments, Vol. 3, Case No. 89-1279, p. 22 (Oct. Term 1990) (question by Scalia, J.) ("[W]ho whispers in my ear that [the practice of awarding punitive damages] is in violation of due process when it's been going on since 1791 and nobody has thought so?"). The practice of 1791, however, does not exist today—except in name.

1. *Punitive Damages Doctrine of 1791.*

Punitive, or exemplary, damages had their basic foundations set forth in 1763 in two English cases involving illegal searches and seizures by officers of the Crown.[12] In *Huckle v. Money*, 95 Eng. Rep. 768 (C.P. 1763), the first case to use the term "exemplary damages," and its companion case, *Wilkes v. Wood*, 98 Eng. Rep. 489 (C.P. 1763), English courts for the first time expressed that "the punitive and deterrent purposes of damage awards could be separated from their compensatory function." Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. Rev. 1, 14 (1982).[13]

Huckle and *Wilkes* were followed by cases approving punitive damages awards in a narrow category of torts

[12] *See* Sales & Cole, *Punitive Damages: A Relic That Has Outlived Its Origins*, 37 Vand. L. Rev. 1117, 1120 (1984); Comment, *Punitive Damages Awards in Strict Products Liability Litigation: The Doctrine, the Debate, the Defenses*, 42 Ohio St. L.J. 771, 772 (1981). *See also Beardmore v. Carrington*, 95 Eng. Rep. 790 (C.P. 1764) (illegal search and seizure); *Bruce v. Rawlins*, 95 Eng. Rep. 934 (C.P. 1770) (illegal search and seizure); *Sharpe v. Brice*, 96 Eng. Rep. 557 (C.P. 1774) (illegal search and seizure).

[13] In *Wilkes*, Lord Chief Justice Pratt announced: "[A] jury shall have it in their power to give damages for more than the injury received . . . . as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself." 98 Eng. Rep. at 498-99. *See also* Sales & Cole, *supra* note 12, at 1120 n.8; Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons From History*, 40 Vand. L. Rev. 1233, 1266 (1987).

involving conscious and intentional harm inflicted by one person on another. These "intentional torts" included assault and battery,[14] malicious prosecution,[15] false imprisonment,[16] and trespass.[17] Punitive damages were allowed in these cases as an auxiliary, or "helper," to the criminal law system, which in eighteeenth century England "punished more severely for infractions involving property damage than for invasions of personal rights." Sales, *The Emergence of Punitive Damages in Product Liability Actions: A Further Assault on The Citadel*, 14 St. Mary's L.J. 351, 355 (1983).[18]

As in England, punitive damages in colonial America (and through the nineteenth and into the twentieth centuries)[19] were available only in a "comparatively small

[14] *See, e.g., Grey v. Grant*, 95 Eng. Rep. 794 (C.P. 1764); *Benson v. Frederick*, 97 Eng. Rep. 1130 (K.B. 1766).

[15] *See, e.g., Leith v. Pope*, 96 Eng. Rep. 777 (C.P. 1799); *Hewlett v. Cruchley*, 128 Eng. Rep. 696 (K.B. 1813).

[16] *See, e.g., Fabrigas v. Mostyn*, 96 Eng. Rep. 549 (C.P. 1774).

[17] *See, e.g., Merest v. Harvey*, 128 Eng. Rep. 761 (C.P. 1814); *Sears v. Lyons*, 171 Eng. Rep. 658 (K.B. 1818). Punitive damages were also allowed for seduction. *See, e.g., Tullidge v. Wade*, 95 Eng. Rep. 909 (C.P. 1769). And, for a period, English courts permitted an award of punitive damages for criminal conversation (*i.e.*, adultery). *See, e.g., Duberly v. Gunning*, 100 Eng. Rep. 696 (K.B. 1813).

[18] *See also* Schwartz & Magarian, *Challenging The Constitutionality of Punitive Damages: Putting Rules of Reason on an Unbounded Legal Remedy*, 28 American Bus. L.J. 485 (1990); Walther & Plein, *Punitive Damages: A Critical Analysis: Kink v. Combs*, 49 Marq. L. Rev. 369, 371 (1965); Freifield, *The Rationale of Punitive Damages*, 1 Ohio St. L.J. 5, 7 (1935). *See generally* W. Prosser & P. Keeton, *The Law of Torts* § 2, at 8 (5th ed. 1984).

[19] The use of "private attorneys general" to sanction antisocial conduct unregulated by the criminal law reached America in 1784. *See Genay v. Norris*, 1 S.C. 6 (1784). *See also* Owen, *Punitive Damages in Products Liability Litigation*, 74 Mich. L. Rev. 1257, 1263, 1287-88 (1976).

class of torts," T. Street, *The Foundations of Legal Liability* 479 (1906)—"the traditional intentional torts." *Symposium Discussion*, 56 S. Cal. L. Rev. 155, 156 (1982) (remarks by Professor Dorsey Ellis, Jr.).[20] They included: assault and battery,[21] libel and slander,[22] malicious prosecution,[23] false imprisonment,[24] and intentional interferences with property such as trespass and conversion, malicious attachment, or destruction of property,[25]

[20] *See, e.g., McWilliams v. Bragg*, 3 Wis. 424, 428-29, 431 (1854) ("[I]n the English courts, the rule or measure of damages in actions for *willful torts*, and especially *personal injuries*, is not confined to mere *compensation* . . . but to some extent as a punishment. . . . 3 Wis. at 428-29 (emphasis in original). [T]he great weight of authority in American courts is in favor of permitting juries in actions of this character . . . to impose what is sometimes termed *exemplary*, and sometimes *punitory* damages, in addition to the actual damages." 3 Wis. at 431 (emphasis in original).

[21] *See, e.g., Corwin v. Watson*, 18 Mo. 71 (1853); *Porter v. Seiler*, 23 Pa. 424 (1854); *Lyon v. Hancock*, 35 Cal. 372 (1868); *Ward v. Blackwood*, 41 Ark. 295 (1883); *Trogden v. Terry*, 172 N.C. 540 (1916).

[22] *See, e.g., Vunck v. Hull*, 3 N.J.L. 814 (1809); *Gilreath v. Allen*, 32 N.C. (10 Ired.) 67 (1849); *Benaway v. Coyne*, 3 Pin. 196 (Wis. 1851); *Sheik v. Hobson*, 64 Iowa 146 (1884); *Louisville & Nashville R.R. Co. v. Ballard*, 85 Ky. 307 (1887); *Coffin v. Brown*, 50 A. 567 (Md. 1901); *Ellis v. Brockton Pub. Co.*, 84 N.E. 1018 (Mass. 1908).

[23] *See, e.g., Brown v. McBride*, 24 Misc. 235, 52 N.Y.S. 620 (1898); *Jackson v. American Tel. & Tel. Co.*, 51 S.E. 1015 (N.C. 1905).

[24] *See, e.g., Lake Shore & Mich. S. Ry. v. Prentice*, 147 U.S. 101 (1893); *Schlencker v. Risley*, 4 Ill. 483 (1842); *Taber v. Hutson*, 5 Ind. 322 (1854); *Parsons v. Harper*, 57 Va. 64 (1860); *Hamlin v. Spaulding*, 27 Wis. 360 (1869); *Green v. Southern Express Co.*, 41 Ga. 515 (1871); *Wheeler & Wilson Mfg. Co. v. Boyce*, 36 Kan. 350 (1887).

[25] *See, e.g., Taylor v. Giger*, 3 Ky. 586 (1803); *North v. Cates*, 5 Ky. 591 (1812); *Treat v. Barber*, 7 Conn. 274 (1828); *Huntley v. Bacon*, 15 Conn. 267 (1842); *Clark v. Bales*, 15 Ark. 452 (1855); *Schindel v. Schindel*, 12 Md. 108 (1858); *Dorsey v. Manlove*, 14

private nuisance,[26] and other conduct amounting to reckless endangerment.[27]

2. *The Broadened Standard By Which Punitive Damages Now Are Awarded.*

Commencing in the late 1960's, several significant legal developments led courts to depart radically from the historical "intentional tort" moorings of punitive damages law; *i.e.*, the law of 1791. First, courts began to apply punitive damages in the developing field of products liability.[28] Second, the advent of "mass tort" litigation[29] resulted in an explosion of claims against manufacturers of such products as asbestos, formaldehyde, DES, Agent Orange, automobiles, tampons, and the Dalkon Shield IUD.[30]

Cal. 553 (1860); *Lynd v. Picket*, 7 Minn. 184 (1862); *Brown v. Allen*, 35 Iowa 306 (1872); *Singer Mfg. Co. v. Holdfodt*, 86 Ill. 455 (1877); *Bradshaw v. Buchanan*, 50 Tex. 492 (1878); *Huling v. Henderson*, 161 Pa. 553 (1894).

[26] *See, e.g., Yazoo v. Mississippi Valley R.R. Co. v. Sanders*, 87 Miss. 607 (1906); *Schumacher v. Shawhan Distillery Co.*, 178 Mo. App. 361 (1914).

[27] *See, e.g., Whipple v. Walpole*, 10 N.H. 130 (1839); *Linsley v. Bushnell*, 15 Conn. 225 (1842); *Pickett v. Crook*, 20 Wis. 358 (1866); *Meibus v. Dodge*, 38 Wis. 300 (1875). As in England, punitive damages were also permitted in cases involving seduction. *See, e.g., Coryell v. Colbaugh*, 1 N.J.L. 77 (1791); *Mcaulay v. Birkhead*, 35 N.C. 28 (1851); *Reutkemeier v. Nolte*, 179 Iowa 342 (1917).

[28] In 1967, a California Court of Appeal held for the first time that punitive damages were recoverable in a strict product liability action. *See Toole v. Richardson-Merrell, Inc.*, 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967). Since then, punitive damages awards in product liability cases have proliferated.

[29] "Mass tort" litigation began in the late 1960's with cases involving the sale of the anti-cholesterol drug MER/29. *See* Rheingold, *The MER/29 Story—An Instance of Successful Mass Disaster Litigation*, 56 Cal. L. Rev. 116 (1968); *Roginsky v. Richardson-Merrell, Inc.*, 378 F.2d 832 (2d Cir. 1967) (Friendly, J.).

[30] *See* Seltzer, *Punitive Damages in Mass Tort Litigation: Addressing the Problems of Fairness, Efficiency, and Control*, 52

Third, courts began—contrary to 200-year old precedent—to permit recovery of punitive damages in contract actions, such as breach of an implied duty of good faith and fair dealing.[31] As Justice O'Connor pointed out in the dissent in *Haslip*, "Unheard of only 30 years ago, bad faith contract actions now account for a substantial percentage of all punitive damages awards." *Haslip*, 111 S. Ct. at 1066.[32] Together, these radical changes of the past twenty-five years have provided punitive damages a significant and unprecedented role in the law—a role which did not exist in 1791.

Relaxed standards for awarding punitive damages are also responsible for the very different role punitive damages play in the law today. As described above, punitive damages in their origins were confined to conscious and

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Fordham L. Rev. 37, 51-52 (1983); Jeffries, *A Comment on The Constitutionality of Punitive Damages*, 72 Va. L. Rev. 139, 142 (1986). Several courts have acknowledged that due process may be implicated in "mass tort" punitive damages awards cases. *See Juzwin v. Amtorg Trading Corp.*, 705 F. Supp. 1053, 1064 (D.N.J.), *vacated*, 718 F. Supp. 1233 (D.N.J. 1989), *rev'd on other grounds sub nom., Juzwin v. Asbestos Corp.*, 900 F.2d 686 (3d Cir.), *cert. denied*, 111 S. Ct. 246 (1990); *Racich v. Celotex Corp.*, 887 F.2d 393, 398 (2d Cir. 1989); *Leonen v. Johns-Manville Corp.*, 717 F. Supp. 272, 283 (D.N.J. 1989).

[31] *See, e.g., Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032 (Cal. 1973); *United States Fidelity & Guar. Co. v. Peterson*, 540 P.2d 1070 (Nev. 1975). *See also* Prosser & Keeton, *supra* note 18, at 11. Contract bad faith punitive damages actions are now accepted by a majority of jurisdictions. Report of the Special Committee on Punitive Damages of the American Bar Association Section on Litigation, *Punitive Damages: A Constructive Examination* 5-2, 5-3 (1986).

[32] Punitive damages for breach of contract are not limited to the insurance area; some jurisdictions permit recovery of punitive damages for breach of consumer contracts. *See* Comment, *Sailing the Uncharted Seas of Bad Faith: Seaman's Direct Buying Service, Inc. v. Standard Oil Co.*, 69 Minn. L. Rev. 1161 (1985); Comment, *The Expanding Availability of Punitive Damages in Contract Actions*, 8 Ind. L. Rev. 668 (1975).

intentional misconduct. In the last twenty-five years, however, courts have considerably loosened this standard, and punitive damages have sometimes been awarded in cases involving less than intentional or conscious wrongdoing. For example, in some states, like Texas, where many large punitive damages awards are imposed,[33] "gross negligence" can support a punitive damages award.[34]

3. *The Explosion in the Size of Punitive Damages Awards In Comparison To Compensatory Damages.*

The size and frequency of punitive damages awards over the past twenty years also differ remarkably from the practice's previous 200-year history. From their origins in England and until the American legal "revolution" of the late 1960's and 1970's, punitive damages "merited scant attention" because they "were rarely assessed and likely to be small in amount." Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. L. Rev. 1, 2 (1982). Typically, punitive damages only slightly exceeded compensatory damages awarded, if at all.[35]

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[33] *See, e.g., Naik, Woman Receives $25 Million Judgment in Bristol-Myers Breast Implant Suit*, Wall St. J., Dec. 24, 1992, at A3 ($20 million punitive damages award).

[34] *See* Tex. Civ. Prac. & Rem. Code Ann. § 41.003 (West 1993). *See also* Fla. Stat. Ann. § 768.73 (West 1992) ("gross misconduct"); *Wisker v. Hart*, 766 P.2d 168 (Kan. 1988) ("gross negligence"); *Buzzard v. Farmers Ins. Co., Inc.*, 824 P.2d 1105 (Okla. 1991) (same).

[35] *See Southern Kan. Ry. v. Rice*, 38 Kan. 398 (1888) ($35 costs and fees, $10 injury to feelings, $71.75 punitive); *Taylor v. Grand Trunk Ry. of Canada*, 48 N.H. 304 (1869) ($500 actual damages, $858.50 exemplary); *Woodman v. Town of Nottingham*, 49 N.H. 387 (1870) ($578 actual, $100 exemplary); *Fay v. Parker*, 53 N.H. 342 (1872) ($150 actual, $331.67 exemplary). *See also* R. Blatt, R. Hammesfahr & L. Nugent, *Punitive Damages: A State By State Guide To Law And Practice* § 1.2, at 5 (1991) ("[G]enerally before 1955, even if punitive damages were awarded, the size of the

Beginning with the late 1960's, however, the size and frequency of punitive damages awards slowly began to increase.[36] Then, in the late 1970's and 1980's, their size "increased dramatically" (Priest, *Punitive Damages and Enterprise Liability*, 56 S. Cal. L. Rev. 123, 123 (1982)), and "unprecedented numbers of punitive awards in product liability and other mass tort situations began to surface."[37] Jeffries, *supra* note 30, at 142. "Today," as one respected commentator in the field has noted, "hardly a month goes by without a multi-million dollar punitive damages verdict in a product liability case." Wheeler, *A Proposal for Further Common Law Development of the Use of Punitive Damages in Modern Products Liability Litigation*, 40 Ala. L. Rev. 919 (1989) (cited by O'Connor, J., dissenting in *Haslip*, 111 S. Ct. at 1066)).[38]

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punitive damage award in relation to the compensatory damage award was relatively small, as even nominal punitive damages were considered to be punishment in and of themselves").

[36] Before 1976, for example, there were only three reported appellate court decisions upholding awards of punitive damages in product liability cases, and the punitive damages awards in each case were modest in proportion to the compensatory damages awarded. *See Toole v. Richardson-Merrell, Inc.*, 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967) ($175,000 compensatory, $250,000 punitive damages); *Gillham v. Admiral Corp.*, 523 F.2d 102 (6th Cir. 1975), *cert. denied*, 424 U.S. 913 (1976) ($125,000 compensatory damages, $50,000 attorneys' fees, $100,000 punitive damages); *Moore v. Jewel Tea Co.*, 253 N.E.2d 636 (Ill. App. 1969), *aff'd*, 263 N.E.2d 103 (Ill. 1970) ($920,000 compensatory damages, $10,000 punitive damages).

[37] *See also* P. Huber, *The Legal Revolution and its Consequences* (1988); W. Olson, *The Litigation Explosion* (1991); S. Turner, *et al., Punitive Damages Explosion: Fact or Fiction?* (Washington Legal Foundation, Working Paper Series No. 50, Nov. 1992).

[38] This trend of "juries . . . award[ing] substantial punitive damages with increasing frequency" (Borowsky & Nicolaisen, *Punitive Damages in California: The Integrity of Jury Verdicts*, 17 U.S.F. L. Rev. 147, 150 (1983)) is illustrated by West Virginia's experience. Between 1968 and 1985, the West Virginia appellate court affirmed only *one* judgment for punitive damages against a business enterprise. But, since 1985, the court has affirmed 10 such awards, of steadily increasing size—the $10 million punitive damages award in this case was the highest affirmed.

This explosive trend is supported by empirical data. A very recent study of punitive damages awards in California, Illinois, New York and Texas (states containing thirty-one percent of the U.S. population) conducted by Texaco Inc., using conservative and reliable methodology and data,[39] found that, after correcting for inflation, the amounts of punitive damages awarded in the four states skyrocketed 117-fold (from $800,000 to $312 million) in the twenty years from 1968-1971 to 1988-1991—reflecting a much faster growth than even compensatory damages awards (up fifty-one times).[40] Texaco, Inc., *An Empirical Study of Final Judgments Awarding Punitive Damages* (presented Oct. 15, 1992).[41] In comparison, the U.S. Gross National Product less than doubled in the same two decades. U.S. Bureau of the Census, *Statistical Abstract of the United States*, 1991, 431 (111th ed. 1991). The results of the Texaco study are consistent with a comprehensive analysis of jury verdicts in the United States

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[39] The Texaco study included only awards reported in appellate decisions that affirmed judgments for punitive damages. No reliance was made on jury verdict reporters or on any anecdotal evidence; thus, the figures represent the actual awards against defendants as punitive damages.

[40] *See* S. Turner, *et al., supra* note 37, at 2-4. The study also found that punitive damages were awarded five times more often in the most recent period. *Id.*

[41] Copies of this unpublished presentation were served on counsel for Petitioner and Respondents and lodged with the Clerk of the Court in the Brief Of *Amici Curiae* American Petroleum Institute and National Association of Manufacturers In Support of Petitioner.

prepared by the RAND Institute for Civil Justice several years ago.[42]

In sum, the practice of awarding punitive damages as it existed in 1791 and through the late 1960's, confined to modest penalties in a few cases of intentional harms such as assault, shares only a name with the contemporary flood of huge awards for an act or course of conduct that may be unintentional.

II. THE APPROPRIATE STANDARD FOR AWARDING PUNITIVE DAMAGES IS INTENTIONAL INFLICTION OF HARM OR CONSCIOUS DISREGARD OF SAFETY.

In the instant case, the West Virginia court held that punitive damages are properly awarded against both "really mean" and "really stupid" defendants. *TXO Production Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870, 887 (W. Va. 1992). The court also held that the "outer limit" of punitive damages awards against "really stupid" defendants is "*roughly* five to one." 419 S.E.2d at 889 (emphasis in original). The court went on to find, however, that TXO's "harmful acts" were not due to mere stupidity, but were "*fraudulent*," "mean-spirited," and "*intentionally* undertaken." 419 S.E.2d at 889 (emphasis in original). It then affirmed a jury verdict awarding $10 million in punitive damages to Respondents,

[42] *See* M. Peterson, S. Sarma, & M. Stanley, *Punitive Damages—Empirical Findings* ix (1987) ("The largest punitive damages awards have increased greatly in size, sharply increasing both the average award and the total dollars awarded") [hereinafter RAND Study]. The RAND Study covered all civil jury trials in Cook County, Illinois, and San Francisco, California, from 1960 to 1984, and all civil jury trials throughout California from 1980 to 1984. RAND Study at *v*. *See also* D. Hensler, M. Vaiana, J. Kakalik & M. Peterson, *Trends in Tort Litigation: The Story Behind the Statistics* 18 (1987) (growth in the average award in product liability suits "has been truly explosive, reflecting increases ranging from 200 to more than 1000 percent" from the period 1960-1964 to 1980-1984).

who sustained at most $19,000 worth of "damages"—for legal fees.

There are two fundamental flaws in the court's decision to apply constitutional limits to "really stupid" defendants, but not against defendants who are "really mean." First, punitive damages traditionally have been treated as wholly inappropriate against what the court below called "really stupid" defendants. Since the historic case of *Vaughan v. Menlove*, 132 Eng. Rep. 490 (C.P. 1837), the penalties embodied in the law of negligence itself have been regarded as a sufficient penalty for "stupid" conduct, be it negligent or grossly negligent. Such behavior is part of and is adequately deterred by general tort law (*cf. Smith v. Wade*, 461 U.S. 30, 50 (1983)) through such universally accepted mechanisms as damages for pain and suffering and the collateral source rule (which prohibits a defendant from introducing evidence that a plaintiff has been compensated for his or her injuries by a "collateral source," such as an insurer).[43]

This Court has, in fact, consistently recognized that punitive damages should be reserved for situations where the defendant has exhibited intentional infliction of harm or a conscious disregard of safety. *See Smith*, 461 U.S. at 41, 41 n.9, 42, 42 n.10 (containing thorough discussion of the Court's decisions in this area). Indeed, in *Milwaukee & St. Paul Railway Co. v. Arms*, 91 U.S. 489 (1876), a diversity railroad collision case, the Court expressly held erroneous a jury instruction allowing a puni-

[43] *See generally* Note, *Exemplary Damages in The Law of Torts*, 70 Harv. L. Rev. 517, 523 (1957):

> If an act is particularly wrongful, society imposes criminal sanctions in order to deter the wrongdoer and others from repeating the offense. But *while some faults, such as ordinary negligence should be discouraged, they do not warrant the stigma and severity of criminal punishment. Such deterrence is effected in tort law by shifting the loss:* the defendant is forced to repair the harm done to the plaintiff. (Emphasis added).

tive damages award for "gross negligence." It found that the term was "too vague, and too likely to be confused with mere ordinary negligence to provide a fair standard." *Smith*, 461 U.S. at 42.[44] More recently, in *Haslip*, the Court approvingly noted: "The trial court specifically found the conduct in question 'evidenced intentional, malicious, gross, or oppressive fraud.'" *Haslip*, 111 S. Ct. at 1046.

Conduct which falls short of conscious or intentional wrongdoing should not be permitted to pollute the common law of punitive damages. This Court should find that the West Virginia court erred in holding—contrary to settled law—that punitive damages can be awarded against the so-called "'really stupid' punitive damages defendant." 419 S.E.2d at 887.

The other fundamental flaw in the West Virginia court's decision, discussed more fully in Section III below, is that the opinion suggests that constitutional limits do not apply to defendants "who intentionally commit acts they know to be harmful," 419 S.E.2d at 889; *i.e.*, the so-called "'really mean' punitive damages defendant." 419 S.E.2d at 887. To the contrary, *Haslip* and following decisions have held that constitutional protections against excessive awards must be applied in this permissible zone of punitive damages.

III. THE AWARD IN THIS CASE VIOLATED DUE PROCESS BECAUSE OF EXCESSIVENESS.

In *Haslip*, the Court indicated that a punitive damages award exceeding four times the compensatory damages awarded was "close to the line" of violating due process

[44] *See also Philadelphia, Wilmington & Baltimore R.R. Co. v. Quigley*, 62 U.S. (21 How.) 202, 214 (1859) (punitive damages proper where "the act complained of was conceived in *the spirit of mischief, or of criminal indifference to civil obligations*") (emphasis added); *Denver v. Rio Grande Ry. v. Harris*, 122 U.S. 597, 609-10 (1887) (same); *Barry v. Edmunds*, 116 U.S. 550, 563 (1885) (same) (citing cases).

because of excessiveness. *See Haslip*, 111 S. Ct. at 1043.[45] The punitive award in this case exceeds 526 times the legal fees awarded as "damages" to Respondents. This outrageous and disproportionate award "surely crosses th[e] line" set forth in *Haslip*. *See Alexander & Alexander, Inc.*, 596 A.2d at 711.[46]

The excessiveness of the award in the instant case is more graphically measured against fines for crimes, including fraud, which are also commonly considered torts. Such fines represent "an objective indicator of contemporary values" for appropriate penalties for deviant conduct, as expressed by elected representatives. *See Perry v. Lynaugh*, 492 U.S. 302, 335 (1988). The Appendix, which lists fines for crimes that are also torts in eight states and the District of Columbia, shows that the largest fine found necessary for punishment and deterrence of fraud is $50,000. *See* Cal. Penal Code § 548 (West 1992) (defrauding or prejudicing insurer). West Virginia has decided that $10,000 is the maximum monetary criminal penalty which can be imposed for fraud (*see* W. Va. Code § 61-3C-4 (Michie 1992) (computer fraud))—an amount a *thousand* times *less* than the punitive damages award in this case. In fact, compared to any criminal fine in any state, the $10 million punitive damages award in this case—purportedly levied to achieve essentially the same societal goals as the criminal law—is ludicrous.

[45] *Haslip* makes an excellent "measuring stick" for the excessiveness of the punitive damages award in the instant case. Both cases involved alleged "*fraudulent*" conduct "*intentionally* undertaken." *TXO Prod. Corp.*, 419 S.E.2d at 889 (emphasis in original). *See Haslip*, 111 S. Ct. at 1046.

[46] The award in the instant case is excessive even by standards adopted by the West Virginia court in *Garnes, supra*. There, the court held that "punitive damages must bear a reasonable relationship to actual damages. . . ." 413 S.W.2d at 908. The instant case involved no traditional compensatory damages, only legal fees.

The huge discrepancy between civil and criminal penalties is particularly distressful when one recalls that the criminal defendant, of course, is given a full panoply of constitutional protections, such as a right against excessive fines and a right not to be held in double jeopardy. These rights are generally not available to the civil punitive damages defendant. Further, in criminal law, the accused must be proven guilty "beyond a reasonable doubt;" and the determination of guilt is clearly separate from proceedings on sentencing.

IV. THE COURT SHOULD FORMULATE GENERAL STANDARDS TO HELP GUIDE COURTS ABOUT EXCESSIVENESS.

Since *Haslip*, at least two courts, including the West Virginia Supreme Court (*see Garnes*, 413 S.E.2d at 908) and the Maryland Court of Special Appeal (*see Alexander & Alexander, Inc.*, 596 A.2d at 710) have focused their decisions on the important relationship between punitive and compensatory damages, striking down excessive punitive damages awards. The *amici* suggest, however, that this Court formulate general standards to help guide courts to determine what is excessive. Proposals have been advanced by non-advocacy organizations such as the American College of Trial Lawyers and the American Law Institute.

The recommendation of the American College of Trial Lawyers, a group of trial attorneys experienced in representing both plaintiffs and defendants, would limit punitive damages to twice the amount of compensatory damages or $250,000, whichever is greater.[47] A 1991 report

[47] *See* American College of Trial Lawyers, *Report on Punitive Damages of the Committee on Special Problems in the Administration of Justice* 15 (1989) [hereinafter ACTL Report]. *Cf.* Tex. Civ. Prac. & Rem. Code Ann. § 41.007 (West 1993) (punitive damages limited to four times actual damages or $200,000, whichever is greater); Nev. Rev. Stat. § 42.005 (Michie 1991) (punitive damages awards limited to $300,000 in cases in which compensatory damages are less than $100,000, and to three times the amount of compensatory damages in cases of $100,000 or more).

by scholars of the American Law Institute[48] similarly endorsed the concept of a ratio coupled with an alternative monetary ceiling ("perhaps $25,000") for cases "in which the plaintiff's harms were minimal even though the defendant's behavior was egregious."[49]

Unlike other approaches, which use only a ratio to compensatory damages to limit punitive damages awards,[50] these proposals provide the trier of fact with great flexibility to do justice in the rare situation where a defendant has engaged in heinous conduct with a huge potential for harm, but which resulted in little actual harm (*e.g.*, the defendant throws harmful acid at a person's face, but misses, causing only minimal clothing damage). Under either proposal, the Court could assess punitive damages up to the fixed monetary ceiling (*e.g.*, $25,000 or

[48] *See* American Law Institute, *Enterprise Responsibility for Personal Injury—Reporters' Study* (Vol. II) (1991) [hereinafter ALI Reporters' Study]. *See generally* Schwartz & Behrens, *The American Law Institute Reporters' Study On Enterprise Responsibility For Personal Injury: A Timely Call For Punitive Damages Reform*, 30:2 San Diego L. Rev. — (1993) (in print).

[49] ALI Reporters' Study (Vol. II) at 259. The Reporters' Study does not recommend a specific ratio of punitive to compensatory damages which states should adopt. *See id.* ("Our concern in this Report is to endorse the substantive principle of the ratio of punitive to compensatory damages, not to commit ourselves to specific judgments about each of the issues in the operative formula").

[50] *See, e.g.*, Report of the Special Committee on Punitive Damages of the American Bar Association Section on Litigation, *supra* note 31 (proposing a three to one ratio of punitive to compensatory damages); Conn. Gen. Stat. § 52-240a (West 1992) (limiting punitive awards to twice compensatory damages); Council on Competitiveness Report, *Model Punitive Damages Act* (1991) (limiting punitive damages to amount of compensatory damages awarded); Colo. Rev. Stat. § 13-21-102 (West 1992) (same).

$250,000) without being handcuffed to a strict ratio corresponding to compensatory damages.[51]

It is important to note that, for due process reasons, any ratio construct is subject to challenge on grounds of excessiveness in two situations: (1) where the defendant is being subjected to repeated punishment for what was essentially a single act or course of conduct (*see* Schwartz & Magarian, *Multiple Punitive Damage Awards in Mass Disaster and Product Liability Litigation: An Assault on Due Process*, 8 Adelphia L.J. 101 (1992)); and (2) where the case involves a very large compensatory damages award. *See TXO Production Corp.*, 419 S.E.2d at 889 n.12. In these situations, strict adherence to a fixed ratio may overkill the deterrent effect of the punitive damages award and be excessive.[52]

In sum, this Court in *Haslip* indicated that due process places limits on punitive damages awards. The Court's opinion, however, has produced mixed results in the lower courts. As a result, punitive damages awards continue to "run wild." *See Haslip*, 111 S. Ct. at 1043. A fair and predictable remedy is needed. This Court should provide to state legislatures and lower courts general guidelines

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[51] *See Garnes*, 413 S.E.2d at 902; Morris, *Punitive Damages in Tort Cases*, 44 Harv. L. Rev. 1173, 1181 (1931). Opponents of these proposals may argue that in such a case $250,000 is an insufficient punishment. This argument approaches the frivolous when one looks at criminal fine punishments for similar wrongful conduct. *See* Appendix.

[52] Whatever limits the Court should deem appropriate, it is important that the jury should not be informed of the limit, and that a jury's award for punitive damages exceeding the limit should be reduced by the judge. *See* ACTL Report at 15. If the jury is informed of the dollar or ratio limit, the jurors may perceive it as a guideline for assessing punitive damages, rather than a ceiling; and, the jurors could be influenced in their findings on compensatory damages by the knowledge of the effect those findings could have on punitive damages.

about excessiveness which can be applied in future cases. Further, this Court should make clear that the appropriate standard for punitive damages liability is intentional infliction of harm or conscious disregard of safety. Any lesser conduct is merely a part of and is adequately deterred by general tort law.

CONCLUSION

The judgment below should be reversed, and the case remanded for re-determination of punitive damages in accordance with guidelines prescribed by this Court.

Respectfully submitted,

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APPENDIX

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CALIFORNIA

Title and Section in the *West's Annotated California Codes*	Description	Fine
Rev. & Tax Code § 19401	Return or information unfiled, false, or fraudulent; intent to evade tax	not more than $20,000
Penal Code § 126	Perjury	incarceration only
Penal Code § 165	Bribery	incarceration only
Penal Code § 241	Assault	not exceeding $1,000
Penal Code § 243	Battery	not exceeding $2,000
Penal Code § 487	Grand Theft	incarceration only
Penal Code § 490	Petty Theft	not exceeding $1,000
Penal Code § 490.1	Petty theft where value taken is under $50	not exceeding $250
Penal Code § 514	Embezzlement	not exceeding $1,000; if value is under $50, not exceeding $250
Penal Code § 548	Defrauding or prejudicing insurer	not exceeding $50,000
Penal Code § 549	False or fraudulent claims against insurers	not exceeding $1,000
Penal Code § 558	Entry upon described lands forbidden	not more than $600

DISTRICT OF COLUMBIA

Title and Section in the *District of Columbia Code*	Description	Fine
§ 22-504	Assault or threatened assault in a menacing manner	not more than $500
§ 22-712	Bribery	not more than $25,000 or 3 times the monetary equivalent of the thing of value, whichever is greater
§ 22-2511	Perjury	not more than $5,000
§ 22-3102	Unlawful entry on property	not more than $100
§ 22-3812	Penalties for theft	not more than $5,000 for 1st degree; not more than $1,000 for 2nd degree
§ 22-3822	Penalties for fraud	For first degree fraud— not more than $5,000 or 3 times the value of the property, whichever is greater, if the value of the property is $250 or more; not more than $1,000 if the value of the property is $250 or less. For second degree fraud— not more than $3,000 or 3 times the value of the property, whichever is greater, if the value of the property is $250 or more; not more than $1,000 if the value of the property is $250 or less.
§ 47-1813.6	Tax Evasion	not more than $5,000 for willful offense; not more than $3,000 for nonwillful offense

ILLINOIS

Title and Section in the *Smith-Hurd Illinois Annotated Statutes*	Description	Fine
38 § 12-1	Assault	not to exceed $500
38 § 12-3	Battery	not to exceed $1,000
38 § 16-1	Theft	not more than $1,000 on property valued at $300 or less; not more than $10,000 on property valued between $300 and $10,000; $10,000 or greater amount stated in offense on property valued between $10,000 and $100,000; $10,000 or greater amount stated in offense on property valued $100,000 or more.
38 § 17-8	Health care benefits fraud	not to exceed $1,000
38 § 21-3	Criminal trespass	not to exceed $500
38 § 32-2	Perjury	not to exceed $10,000
38 § 33-1	Bribery	not to exceed $10,000

MARYLAND

Title and Section in the *Annotated Code of Maryland*	Description	Fine
Art. 27, § 12	Assault	incarceration only
Art. 27, § 23	Offering bribe to or receiving bribe by public officer	not less than $100 not more than $5,000
Art. 27, § 173	Fraud—Conversion of partnership money	not more than $5,000
Art. 27, § 209	Fraud—Receiving premiums after insolvency	not more than $500
Art. 27, § 342	Theft	a value of $300 or greater shall restore property to owner or pay the value of the property or services and be fined not more than $1,000; a value of $300 or less shall restore property to owner or pay him the value of the property or services and be fined not more than $500
Art. 27, § 439	Perjury	incarceration only
Art. 27, § 576	Trespass on posted property	not exceeding $500
Tax General § 13-1001	Willful failure to file return	not exceeding $5,000 for income tax

MICHIGAN

Title and Section in *Michigan Statutes Annotated*	Description	Fine
Penal Code § 28.276(1)	Assault without weapon and infliction of serious injury without certain intent	not more than $500
Penal Code § 28.313	Bribe	not more than $5,000
Penal Code § 28.371	Embezzlement	not more than $100 if valued at $100 or under; not more than $5,000 if valued at more than $100
Penal Code § 28.588	Larceny	not more than $2,500 if value of property stolen exceeded $100; not more than $100 if property stolen valued at $100 or less
Penal Code § 28.594	Larceny by conversion or embezzlement	not more than$2,500 if value of property exceeded $100; not more than $100 if property stolen valued at $100 or less
Penal Code § 28.664	Perjury committed in courts	incarceration only
Penal Code § 28.815	Willful trespass	not more than $100
Penal Code § 28.824	Wage discrimination	not more than $100

NEW YORK

Title and Section in *New York Consolidated Laws*	Description	Fine
Penal Law § 120.00	Assault in the third degree	not exceeding $1,000
Penal Law § 120.05	Assault in the second degree	not exceeding $5,000
Penal Law § 120.10	Assault in the first degree	not exceeding $15,000
Penal Law § 140.10	Criminal trespass in the third degree	not exceeding $500
Penal Law § 140.15	Criminal trespass in the second degree	not exceeding $1,000
Penal Law § 140.17	Criminal trespass in the first degree	not exceeding $5,000
Penal Law § 155.25	Petit Larceny	not exceeding $1,000
Penal Law § 155.40	Grand Larceny in the second degree	not exceeding $15,000
Penal Law § 155.42	Grand Larceny in the first degree	not exceeding $30,000
Penal Law § 170.15	Forgery in the first degree	not exceeding $15,000
Penal Law § 185.05	Fraud involving a security interest	not exceeding $1,000
Penal Law § 190.05	Issuing a bad check	not exceeding $500
Penal Law § 200.00	Bribery in the third degree	not exceeding $5,000
Penal Law § 200.03	Bribery in the second degree	not exceeding $15,000
Penal Law § 200.04	Bribery in the first degree	not exceeding $30,000
Penal Law § 210.10	Perjury in the third degree	not exceeding $1,000
Penal Law § 210.10	Perjury in the second degree	not exceeding $5,000
Penal Law § 210.015	Perjury in the first degree	not exceeding $5,000
Tax Law § 1801	Failure to file a return or report	not exceeding $1,000
Tax Law § 1802	Repeated failure to file	not exceeding $5,000

TEXAS

Title and Section in *Vernon's Texas Codes Annotated*	Description	Fine
Penal Code § 22.01	Assault	not to exceed $3,000
Penal Code § 30.05	Criminal Trespass	not to exceed $1,500
Penal Code § 31.03	Theft (includes embezzlement)	not to exceed $500 if value of property stolen is less than $20; not to exceed $1,500 if value of property stolen is less than $200; not to exceed $3,000 if value of property stolen is less than $750; not to exceed $10,000 if value of property stolen is $750 or more
Penal Code § 32.21	Forgery	not to exceed $3,000
Penal Code § 32.34	Fraud in Insolvency	not to exceed $3,000
Penal Code § 32.41	Issuance of Bad Check	not to exceed $500
Penal Code § 32.45	Misapplication of Fiduciary Property	not to exceed $3,000 if value of property is less than $200; not to exceed $10,000 if value of property is more than $200
Penal Code § 36.02	Bribery	not to exceed $10,000
Penal Code § 37.02	Perjury	not to exceed $3,000

VIRGINIA

Title and Section in the *Code of Virginia*	Description	Fine
§ 18.2-57	Assault and battery	not more than $2,500
§ 18.2-95	Grand larceny (includes embezzlement)	not more than $2,500
§ 18.2-96	Petit larceny	no more than $2,500
§ 18.2-119	Trespass	not more than $2,500
§ 18.2-181	Issuing bad check	not more than $2,500
§ 18.2-204	False statement for the purpose of defrauding industrial sick benefit company	not more than $500
§ 18.2-434	Perjury	not more than $2,500
§ 18.2-449	Bribery	not more than $100,000
§ 58.1-3916.1	Criminal penalties for failure to file returns; false statements	not more than $500 if tax assessed is $1,000 or less; not more than $1,000 if tax assessed is more than $2,500

WEST VIRGINIA

Title and Section in the *West Virginia Code*	Description	Fine
§ 11-9-10	Attempt to evade tax	not more than $10,000
§ 61-2-9	Malicious or unlawful assault; battery	not exceeding $500
§ 61-3-12	Entry of building other than dwelling	not exceeding $100
§ 61-3-13	Grand and petit larceny	not exceeding $500 if value of property stolen is $200 or more; not exceeding $100 if value of property stolen is $200 or less
§ 61-3-24	Obtaining money, proeprty and services by false pretenses	not more than $500
§ 61-3-24a	Obtaining or attempting to obtain goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means	not more than $500
§ 61-3-38	Publiction of false advertisements	not more than $100
§ 61-3-39a	Making, issuing worthless check	not more than $100
§ 61-3B-2	Trespass in structure or conveyance	not more than $500
§ 61-3C-4	Computer fraud	not more than $10,000
§ 61-5-3	Perjury	not more than $1,000
§ 61-5-7	Bribery	not more than $5,000
§ 61-3-37	Publication of false statement as to financial condition of person, firm or corporation	not more than $1,000